

**STATE OF MICHIGAN**

**BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION**

COMPLAINT AGAINST:

**Hon. Mary Brouillette Barglind**

41<sup>st</sup> Circuit Court

705 S. Stephenson Ave

P.O. Box 609

Iron Mountain, MI 49801

**FORMAL COMPLAINT NO. 83**

**COMPLAINT**

The Michigan Judicial Tenure Commission (“Commission”) files this complaint against Hon. Mary Brouillette Barglind, 41<sup>st</sup> Circuit Court Judge, serving the Counties of Dickinson, Menominee, and Iron, Michigan. This action is taken pursuant to the authority of the Commission under Article 6, Section 30 of the Michigan Constitution of 1963, as amended and MCR 9.200 *et seq.* The filing of this Complaint has been authorized and directed by resolution of the Commission.

Respondent is, and at all material times was, a judge of the 41<sup>st</sup> Circuit Court in Dickinson, Menominee, and Iron Counties, Michigan. As a judge, she is subject to all the duties and responsibilities imposed on her by the Michigan Supreme Court, and is subject to the standards for discipline set forth in MCR 9.104 and

MCR 9.205. Respondent is charged with violating her judicial and professional duties as set forth in the following paragraphs.

1. Respondent at all relevant times was a judge of the 41<sup>st</sup> Circuit Court, Dickinson, Menominee, and Iron Counties, Michigan.

### **COUNT I- DELAY**

2. From 2003 through the present, Respondent has been engaged in a pattern of delay in rendering decisions in matters that have been submitted to her for review.

*Knight Owl v Michigan Liquor Control Commission,*  
*Dickinson County Case No. 03-13070-AA*

3. During all relevant periods, Respondent was the judge assigned to *Knight Owl v Michigan Liquor Control Commission, Dickinson County Case No. 03-13070-AA*.

4. *Knight Owl* involved an appeal of an administrative agency decision fining the appellant \$1,000, or in the alternative imposing a 50-day suspension of the liquor license at issue, based on charges of serving liquor to an intoxicated person.

5. The appellee filed a motion on February 5, 2004, requesting dismissal of the appeal. Respondent presided over a hearing on March 3, 2004, and took the matter under advisement.

6. Respondent issued a decision in the case on October 30, 2006, almost 32 months after Respondent took the motion under advisement.

7. There was no justifiable reason for the delay.

*Beaulier v Ford Motor, et al, Dickinson County Case No. 04-13306-CE*

8. During all relevant periods, Respondent was the judge assigned to *Beaulier v Ford Motor, et al, Dickinson County Case No. 04-13306-CE*.

9. *Beaulier* involves allegations that defendants caused environmental contamination of property owned by the plaintiffs.

10. The defendants filed a motion for summary disposition in September 2004, asserting that the statute of limitations had expired.

11. In their brief submitted to Respondent, the defendants referenced an independent lawsuit, *Beauchamp, et al v Ford Motor, et al*, Dickinson County Case No. 02-012608-CE, which was a class action brought by the same attorney based on similar claims against the same defendants.

12. In *Beauchamp*, another judge dismissed the case based on an expiration of the statute of limitations.

13. In July 2005, the defendants amended their brief to note that the dismissal in *Beauchamp* had been affirmed on appeal. The brief did not raise new facts or legal arguments other than those already previously presented to Respondent.

14. Respondent held a hearing on the motion in August 2005.
15. Respondent had not rendered a decision as of January 23, 2008.
16. There is no justifiable reason for the delay, which was over 29 months as of January 23.

*Mason v City of Menominee, Menominee County Case No. 02-010066-CH*

17. During all relevant periods, Respondent was the judge assigned to *Mason v City of Menominee, Menominee County Case No. 02-010066-CH*.

18. *Mason* involved a quiet title claim by a resident who lives next to a Menominee city park, based on confusion as to the property line between the parcels of property.

19. Respondent completed a two-day bench trial in the case on May 16, 2003, and took the matter under advisement.

20. Respondent rendered her decision on April 29, 2005, a delay of approximately 23 months.

21. The decision addressed only abandonment, and not the other the legal theories litigated by the parties (which numbered between four and six, depending upon the treatment by the parties in their trial briefs).

22. There was no justifiable reason for the delay.

23. The decision was appealed, and on September 12, 2006, the Michigan Court of Appeals reversed the matter as it determined Respondent erred in applying the abandonment theory to case.

24. The Court of Appeals remanded the matter for Respondent to resolve the remaining undecided legal issues.

25. Respondent held a status conference on December 4, 2006, and established a briefing schedule with the last filing due on March 19, 2007.

26. The case was at issue over five and a half years.

27. There was no justifiable reason for the delay in Respondent's conducting the status conference, for the length of the briefing period (given the age of the case and as the issues had been briefed by the parties for trial), and the delay in her rendering a decision after the appeal.

*Grosso v Carlson, Dickinson County Case No. 03-013085-CH*

28. During all relevant periods, Respondent was the judge assigned to *Grosso v Carlson, Dickinson County Case No. 03-013085-CH*.

29. *Grosso* was a quiet title action involving legal theories based on acquiescence and adverse possession, concerning a disputed property line between two parcels.

30. Respondent conducted a three-day bench trial that concluded on November 18, 2004, at which Respondent took the matter under advisement.

31. Respondent rendered her decision on October 30, 2006, which reflected a delay of approximately 23 months.

32. There was no justifiable reason for the delay.

*Normand v Normand, Dickinson County Case No. 06-14228-DO*

33. During all relevant periods, Respondent was the judge assigned to *Normand v Normand, Dickinson County Case No. 06-14228-DO*.

34. *Normand* was a divorce proceeding where the parties had no minor children, both litigants were working (which eliminated spousal support issues), and did not involve a request for attorney fees.

35. The significant disputes between the parties concerned the treatment of three assets, which were two pieces of real property and the wife's pension.

36. Respondent conducted a bench trial in the matter on October 6, 2006.

37. At a post-trial conference held in March 2007 via telephone, Respondent represented to counsel that Respondent knew the decision had not been completed and that Respondent was "finalizing" it.

38. Respondent's representation that she was finalizing the decision was inaccurate, as she did not issue it until December 20, 2007.

39. There was no justifiable reason for Respondent taking over 14 months to render her decision in this matter.

*Bublioni v Bublioni, Dickinson County Case No. 02-12458-DM*

40. During all relevant periods, Respondent was the judge assigned to *Bublioni v Bublioni, Dickinson County Case No. 02-12458-DM*.

41. *Bublioni* involves a post-judgment divorce proceeding where the father requested modification of child support and parenting time for three children in the mother's custody.

42. The father filed the petition on or about June 29, 2004, and Respondent conducted the hearing on or about November 2, 2004, and January 12, 2005.

43. Respondent rendered a decision on the motion on January 16, 2006, a delay of one year after the hearing concluded, and 18 months after the petition was filed.

44. There was no justifiable reason for the delay.

45. When Respondent rendered her decision, she determined that it would be retroactive to the filing of the petition, approximately one and a half years earlier.

46. The delay, accompanied by the retroactive effect of the revision of child support, would have caused an extreme financial hardship on the mother, as she potentially would have had to bear the burden of a year and a half of altered child support.

47. Those circumstances forced the mother to incur additional attorney fees, as she was compelled to file a motion for reconsideration to lessen the financial impact she faced, as the decision was under advisement for such an extended period.

*Lucier v LaFave, Menominee County Case No. 05-011480-CH*

48. During all relevant periods, Respondent was the judge assigned to *Lucier v LaFave, Menominee County Case No. 05-011480-CH*.

49. *Lucier* involved a dispute concerning a parcel of property containing three family homes.

50. The matters at issue related to the interpretation of a will and deed, the statute of frauds, and the parole evidence rule.

51. The following facts relate to the submission of the case to Respondent:

- a. Respondent conducted a bench trial on May 17 and 25, 2006, with directions to file post-trial briefs within 14 days after the trial concluded;
- b. Plaintiff filed motion to reopen proofs in June, without issuing notice of hearing to defense counsel;
- c. Plaintiff filed a post-trial brief on August 8;
- d. The hearing on the motion to re-open proofs scheduled for August 10, 2006, was not held (Plaintiff's counsel was ill and defense counsel not notified of hearing);



- e. Defendant obtained an extension until October 20 to file a post-trial brief due to the pending motion to re-open proofs;
- f. Respondent wrote the attorneys on October 26 inquiring as to statute of motion to re-open proofs (the motion was subsequently withdrawn);
- g. In January 2007, Plaintiff filed a motion for possession pending judgment; and
- h. At the hearing on that motion, held on February 23, 2007, Respondent represented that Respondent would issue a decision on all outstanding matters by February 28.

52. Respondent failed to maintain control over the proceedings between the trial and the final submission of the case to Respondent, as the nine-month period between those dates was excessive.

53. Respondent issued a three-page opinion, without any reference to case authority, on April 10, 2007.

54. The decision was issued six weeks after it was taken under advisement a second time, five months after the last post-trial brief was submitted, and 11 months after the trial was completed.

55. There was no justifiable reason for the delay.

56. Respondent represented to counsel that she would render a decision by February 28, 2007 (five days from her statement).

57. Respondent failed to comply with her representation to counsel when she would render a decision, as she completed it over six weeks after the date she represented it would be issued.

*Rasmussen v Rasmussen, Menominee County Case No. 02-010369-DO*

58. During all relevant periods, Respondent was the judge assigned to *Rasmussen v Rasmussen, Menominee County Case No. 02-010369-DO*.

59. *Rasmussen* involved a divorce after a 20-year marriage, with no minor children.

60. The primary asset at issue was the husband's dairy farm, which provided a livelihood for both parties throughout their marriage.

61. Respondent conducted a bench trial on November 13 and 19, 2003.

62. Respondent made a representation (as reflected by the Case Register of Actions) that Respondent would render a decision "on November 26, 2003."

63. Respondent rendered an opinion on August 24, 2004, which was over nine months after the hearing was completed.

64. There was no justifiable reason for the delay.

65. Respondent failed to comply with her representation to counsel when she would render a decision, as Respondent advised them it would be issued on November 26, 2004 (seven days from her statement), while Respondent completed it over nine months later.

*M & M Splicers v Malone, Menominee County Case No. 03-010477-CZ*

66. During all relevant periods, Respondent was the judge assigned to *M & M Splicers v Malone, Menominee County Case No. 03-010477-CZ*.

67. *M & M Splicers* involved a business dispute between two brothers who were owners of the company, over funds used to purchase equipment for the business.

68. Respondent conducted a half-day bench trial on August 30, 2004.

69. Respondent rendered her decision on May 4, 2005, which was eight months after she took the case under advisement.

70. There was no justifiable reason for the delay.

*Theisen v City of Iron Mountain, Dickinson County Case No. 05-014075-CK*

71. During all relevant periods, Respondent was the judge assigned to *Theisen v City of Iron Mountain, Dickinson County Case No. 05-014075-CK*.

72. *Theisen* involved a claim by Iron Mountain's retired fire chief against the city, to compel the city to add his new wife to the retirees' health insurance plan.

73. The parties agreed that the facts were not in dispute (except for possible damages), so they submitted the matter to Respondent based on a motion for partial summary disposition.

74. Respondent conducted the hearing on September 5, 2006, at which time the judge took the matter under advisement.

75. Respondent issued an opinion and order on April 27, 2007, which was 7-1/2 months after she took it under advisement.

76. There was no justifiable reason for the delay.

*Becker v Havelka, Menominee County Case No. 03-010603-NZ*

77. During all relevant periods, Respondent was the judge assigned to *Becker v Havelka, Menominee County Case No. 03-010603-NZ*.

78. *Becker* involves plaintiff's sale of property and a building to defendant in 1999, with plaintiff continuing to lease space in the building.

79. In 2001, a fire destroyed the building, but the insurance did not cover plaintiff's loss of personal property. He sued defendant regarding the "fire issue."

80. The defendant later filed a counterclaim, based on an assertion that he owned two strips of property adjacent to the original parcel, and plaintiff wrongfully conveyed them to a third party (the "real estate issue").

81. The defendant filed a motion for summary disposition in mid-2006 on his counter-claim (on the real estate issue), and plaintiff filed a counter-motion.

82. Respondent held a hearing on the summary disposition motions on December 15, 2006, where she took the matter under advisement.

83. At the hearing, Respondent represented that a decision would be issued between December 18 and 20, 2006 (as reflected by the Case Register of Actions).

84. Respondent rendered an opinion on April 12, 2007, which was a delay of four months.

85. There was no justifiable reason for the delay.

86. Respondent advised counsel she would render a decision between December 18 and 20, 2006 (that date was between three and five days from her statement).

87. Respondent failed to comply with that representation, as she issued the decision four months later.

88. Plaintiffs later filed two motions for summary disposition regarding the “damage” counts of the counter-claim, based on fraud and slander of title.

89. Respondent conducted the motion hearing on October 4, 2007, and again made a representation as to when her decision would be rendered, which was “within two weeks.”

90. Time was of the essence as to the resolution of the motions, which counsel advised Respondent at the hearing, as the case evaluation was tentatively scheduled to be held in mid-December 2007.

91. Respondent was advised at a pre-trial conference on November 12, 2007, that the case evaluation was definitively scheduled for December 18, 2007.

92. As the case involves multiple attorneys representing the parties on multiple issues, a substantial amount of time was needed for counsel to prepare case summaries to provide to the evaluation panel by the December 4 due date.

93. Respondent did not render her decision until December 13, 2007, which allowed only two working days for the parties to address the opinion prior to the evaluation.

94. There was no justifiable reason for the two-month delay and the burden imposed on counsel due to the judge's actions.

95. Respondent failed to comply with her representation to counsel when she would render a decision, as she advised them it would be issued within two weeks of the hearing, while it has not been completed until more than two months from the date of her statement.

*Backus v Holmes (Backus), Dickinson County Case No. 05-013602-DM*

96. During all relevant periods, Respondent was the judge assigned to *Backus v Holmes (Backus), Dickinson County Case No. 05-013602-DM*.

97. *Backus* involved a post-judgment show-cause hearing, which centered on the mother's failure to take the couple's children to Jehovah's Witness meetings, pursuant to an agreement in the Judgment of Divorce.

98. Other disputes between the parties were less significant and did not involve in-depth factual or legal analysis.

99. A final issue, addressing child support, was referred to the Friend of the Court, with the parties agreeing to abide by the FOC decision.

100. Respondent conducted a hearing on September 26, 2006, on the motion.

101. At the hearing, Respondent represented that Respondent would render decision at a hearing on October 6, 2006.

102. Respondent later cancelled the October 6 hearing, but made no representation that the decision would be issued on some other date (leaving the impression it would be rendered in writing).

103. Respondent rendered her decision on January 5, 2007, which was three and a half months after the hearing.

104. There was no justifiable reason for the delay.

105. Respondent failed to comply with her representation to counsel when she would render a decision, as she advised them it would be issued on October 6, while it was issued three months after that date.

*Deyaert v Deyaert, Dickinson County Case No. 06-14482-DO*

106. During all relevant periods, Respondent was the judge assigned to *Deyaert v Deyaert, Dickinson County Case No. 06-14482-DO*.

107. *Deyaert* was a divorce proceeding that did not involve children, and concerned a marriage that lasted six years.

108. The matters in dispute centered on property issues.

109. Respondent conducted a two-day trial that was completed on June 26, 2007, and took the matter under advisement.

110. Respondent represented to the parties and counsel that Respondent would render a decision by July 20, 2007.

111. Respondent did not issue her decision until September 20, 2007, which was three months after the bench trial.

112. There was no justifiable reason for the delay.

113. Respondent failed to comply with her representation to counsel as to when she would render a decision, as she advised them it would be issued by July 20, while it was issued two months after that date.



*Dickinson County Landlord Association v City of Iron Mountain,*  
*Dickinson County Case No. 06-14205-CZ*

114. During all relevant periods, Respondent was the judge assigned to *Dickinson County Landlord Association v City of Iron Mountain, Dickinson County Case No. 06-14205-CZ*.

115. *Dickinson County Landlord Association* concerned plaintiff's constitutional challenges to a new 50-page landlord/tenant ordinance adopted by the City of Iron Mountain.

116. The parties agreed that there were no factual disputes, and submitted the matter to Respondent via motion for summary disposition.

117. Respondent conducted a hearing on the motion for summary disposition on February 7, 2007.

118. Respondent decided most of the issues in dispute from the bench at the hearing.

119. However, she took certain matters under advisement with a representation that Respondent would complete her decision on February 21, 2007.

120. The undecided matters resolved an identification of the portions of the ordinance that were constitutionally vague.

121. Respondent did not identify the provisions on that date, but instead represented Respondent would provide a list of unconstitutional provisions on February 23.

122. Respondent failed to provide the list of vague provisions until May 17, 2007, which was three and a half months after the date of the hearing.

123. There was no justifiable reason for the delay.

124. Respondent failed to comply with her representations to counsel and the members of the plaintiff landlord association (of which a significant number were in court) as to when Respondent would render a decision, as she advised them it would be issued on February 21 and then February 23, while it was issued almost three months after those dates.

*Herson v Herson, Menominee County Case No. 97-008231-DM*

125. During all relevant periods, Respondent was the judge assigned to *Herson v Herson, Menominee County Case No. 97-008231-DM*.

126. *Herson* involved a post-judgment motion regarding change of custody, which was filed on June 26, 2006.

127. The matter required prompt attention as her decision would determine where the children attended school in the fall.

128. Respondent conducted a hearing on the motion on August 18, 2006, and represented that Respondent would render a decision “in the next few days” (as reflected by a notation in the Case Register of Actions).

129. Respondent did not render a decision until September 29, 2006, approximately one month after the start of the school year.

130. Her decision changed custody as to one child, who continued to reside with the father and attend school in the Menominee system, while the other moved to Wisconsin with the mother, and therefore attended school in that state.

131. There was no justifiable reason for failing to render her decision before the start of the school year.

132. Respondent failed to comply with her representation to counsel as to when she would render a decision, as she advised them it would be issued “in the next few days,” while it was issued six weeks after that date.

Respondent’s conduct, as described above, if true, constitutes:

- a) Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30 and MCR 9.205;
- b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205;
- c) Persistent neglect in the timely performance of judicial duties, in violation of MCR 9.205(B)(1)(b);
- d) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Code of Judicial Conduct, Canon 1;
- e) Failure to be aware that the judicial system is for the benefit of the litigant and public, and not the judiciary, contrary to the Code of Judicial Conduct, Canon 1;

- f) Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of the Code of Judicial Conduct, Canon 2A;
- g) Conduct involving impropriety and the appearance of impropriety, in violation of the Code of Judicial Conduct, Canon 2A;
- h) Failure to respect and observe the law and to conduct herself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B;
- i) Failure to promptly dispose of the business of the court, contrary to Code of Judicial Conduct, Canon 3A(5); and
- j) Conduct which exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(A)(2).

## **COUNT II – COOPERATION AND COMPLIANCE WITH SCAO**

### *A. Failure to respond to SCAO inquiries*

133. Respondent has engaged in a pattern of failing to respond to inquiries issued by SCAO personnel.

### *Knight Owl v Michigan Liquor Control Commission, Dickinson County Case No. 03-13070-AA*

134. As noted above, *Knight Owl v Michigan Liquor Control Commission, Dickinson County Case No. 03-13070-AA*, involved an appeal of an administrative agency decision fining the appellant \$1,000, or in the alternative imposing a 50-

day suspension of the liquor license at issue, based on charges of serving liquor to an intoxicated person.

135. The appellee filed a motion on February 5, 2004, requesting dismissal of the appeal. Respondent presided over a hearing on March 3, 2004, and took the matter under advisement.

136. James Covault, Director of SCAO Region IV, wrote Respondent on July 12, 2006, to inquire as to the status of the matter<sup>1</sup>, but Respondent did not reply.

137. On July 27, Mr. Covault wrote to Respondent again and asked for a response by August 4, but Respondent did not reply.

138. Mr. Covault called Respondent on August 9, 2006, regarding the matter, but Respondent did not return his call.

139. He called again on October 19, after the case appeared as pending on Respondent's Delay in Matters Submitted to Judge report, but she did not return his call.

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<sup>1</sup> Mr. Covault erroneously noted that Respondent took the case under advisement during that month, based on a notation in the Case Register of Actions stating: "waiting for Judge's opinion." Respondent actually took it under advisement in March 2004.

*Grosso v Carlson, Dickinson County Case No. 03-013085-CH*

140. As noted above, *Grosso v Carlson, Dickinson County Case No. 03-013085-CH*, was a quiet title action involving legal theories based on acquiescence and adverse possession, concerning a disputed property line between two parcels.

141. Respondent conducted a three-day bench trial that concluded on November 18, 2004, at which Respondent took the matter under advisement.

142. Mr. Covault contacted Respondent in June 2006 as matter was listed as pending on her Delay in Matters Submitted to Judge report, when it was not on previous reports.

143. Respondent reported to Mr. Covault that the decision would be rendered in a few days.

144. On July 12 and July 27, 2006, Mr. Covault wrote Respondent regarding the matter, but Respondent failed to reply to either letter.

145. He called Respondent on August 9 and left a message asking that Respondent contact him about the case, but Respondent did not return the call.

146. Mr. Covault saw Respondent at a judicial conference on August 31, 2006, and in response to an inquiry about the matter, Respondent represented to him that the decision would be issued the next day.

147. However, Respondent identified the case as pending on her next Delay in Matters Submitted to Judge report, filed on October 16, 2006.

148. Mr. Covault called Respondent's office again on October 19, 2006, and she again failed to return his call.

*Lucier v LaFave, Menominee County Case No. 05-011480-CH*

149. As noted above, *Lucier v LaFave, Menominee County Case No. 05-011480-CH*, involved a dispute concerning a parcel of property containing three family homes, including the interpretation of a will and deed, the statute of frauds, and the parole evidence rule.

150. Respondent conducted a bench trial on May 17 and 25, 2006.

151. After nine months of post-judgment proceedings, Respondent conducted a hearing on February 23, 2007, where Respondent represented that Respondent would issue a decision on all outstanding matters by February 28.

152. On March 1, 2007, Mr. Covault wrote Respondent inquiring about the status of this case.

153. Although he did not specifically request a response, the letter was clear that he expected Respondent to either explain the delay or render a decision, and Respondent did neither.

154. On March 13, 2007, Mr. Covault wrote to Respondent again and inquired as to the reason for the delay, offered his assistance, and asked when the decision would be issued. Respondent did not reply.

Becker v Havelka, Menominee County Case No. 03-010603-NZ

155. As noted above, *Becker v Havelka, Menominee County Case No. 03-010603-NZ*, involves plaintiff's sale of property and a building to defendant in 1999, with plaintiff continuing to lease space in the building.

156. A 2001 fire in the building led to the plaintiff's suit against the defendant, after which the defendant later filed a counterclaim based on a real estate dispute relating to the property.

157. Respondent held a hearing on summary disposition motions based on the real estate issue only on December 15, 2006, at which Respondent took the matter under advisement.

158. At the hearing, Respondent represented that a decision would be issued between December 18 and 20, 2006 (as reflected by the Case Register of Actions).

159. On March 1, 2007, Mr. Covault wrote Respondent inquiring about the status of this case.

160. Although he did not specifically request a response, the letter was clear that he expected Respondent to either explain the delay or render a decision, and Respondent did neither.



161. On March 13, 2007, Mr. Covault wrote to Respondent again and inquired as to the reason for the delay, offered his assistance, and asked when the decision would be issued. Respondent did not reply.

*Backus v Holmes (Backus), Dickinson County Case No. 05-013602-DM*

162. As noted above, *Backus v Holmes (Backus), Dickinson County Case No. 05-013602-DM*, involved a post-judgment show-cause hearing, which centered on the mother's failure to take the couple's children to Jehovah's Witness meeting, pursuant to an agreement in the Judgment of Divorce.

163. Other disputes existed between the parties, including child support, which was referred to the Friend of the Court for review.

164. Respondent conducted a hearing on September 26, 2006, on the motion, where Respondent represented that Respondent would render decision at a hearing on October 6, 2006.

165. Respondent later cancelled the October 6 hearing, but made no representation that the decision would be issued on some other date (leaving the impression it would be rendered in writing).

166. Mr. Covault placed calls to Respondent on December 18 and 19, 2006, regarding the status of her decision, which Respondent did not return.

167. He wrote to Respondent on December 20, asking for a response by December 29, 2006, as to the status of the matter.

168. Respondent did not reply by December 29, 2006.

169. Instead, Respondent (or a member of her staff, at her direction) merely returned a copy of Mr. Covault's letter to him in mid-January 2007, with a hand-written note that the decision was issued on January 5.

B. Failure to identify pending cases pursuant to MCR 8.107

170. From May 2004 through the present, Respondent has been engaged in a pattern of failing to submit to SCAO an accurate report of matters undecided or pending, as required under MCR 8.107.

171. For all relevant periods prior to January 1, 2006, MCR 8.107 required Respondent to file a "Statement of Matters Undecided" with SCAO, on the first business day of January, May, and September each year.

172. The court rule required Respondent to report all matters which remained undecided for more than four months from the date submitted to Respondent (as reflected by the last argument made or the expiration of the time for filing the last brief).

173. On her "Statement of Matters Undecided" report filed in May 2004, Respondent failed to identify *Rasmussen v Rasmussen*, Menominee County Case No. 02-010369-DO, as pending, while MCR 8.107 required that it be listed.

174. On her "Statement of Matters Undecided" report filed in September 2004, Respondent failed to identify *Knight Owl v Michigan Liquor Control*

*Commission*, Dickinson County Case No. 03-13070-AA, and *Mason v City of Menominee*, Menominee County Case No. 02-010066-CH, as pending, while MCR 8.107 required that they be listed.

175. On her “Statement of Matters Undecided” report filed in January 2005, Respondent failed to identify *Knight Owl v Michigan Liquor Control Commission*, Dickinson County Case No. 03-13070-AA, and *Mason v City of Menominee*, Menominee County Case No. 02-010066-CH, as pending, while MCR 8.107 required that they be listed.

176. On her “Statement of Matters Undecided” report filed in May 2005, Respondent failed to identify *Knight Owl v Michigan Liquor Control Commission*, Dickinson County Case No. 03-13070-AA, *M & M Splicers v Malone*, Menominee County Case No. 03-010477, and *Grosso v Carlson*, Dickinson County Case No. 03-013085-CH, as pending, while MCR 8.107 required that they be listed.

177. On her “Statement of Matters Undecided” report filed in September 2005, Respondent failed to identify *Knight Owl v Michigan Liquor Control Commission*, Dickinson County Case No. 03-13070-AA, and *Bublioni v Bublioni*, Dickinson County Case No. 02-12458-DM, as pending, while MCR 8.107 required that they be listed.

178. On her “Statement of Matters Undecided” report filed in January 2006, Respondent failed to identify *Knight Owl v Michigan Liquor Control*

*Commission*, Dickinson County Case No. 03-13070-AA, *Grosso v Carlson*, Dickinson County Case No. 03-013085-CH, and *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE, as pending, while MCR 8.107 required that they be listed.

179. An amendment to MCR 8.107, which took effect on January 1, 2006, required Respondent to file a “Delay in Matters Submitted to Judge” report on the first business day of January, April, July, and October.

180. The court rule requires Respondent to provide information on all matters pending during the period that were not decided within 56 days from submission (as reflected by the last argument made or the expiration of the time for filing the last brief or production of transcripts).

181. On her “Delay in Matters Submitted to Judge” report filed for the first quarter of 2006, Respondent failed to identify *Knight Owl v Michigan Liquor Control Commission*, Dickinson County Case No. 03-13070-AA, *Grosso v Carlson*, Dickinson County Case No. 03-013085-CH, and *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE, as pending, while MCR 8.107 required that they be listed.

182. On her “Delay in Matters Submitted to Judge” report filed for the second quarter of 2006, Respondent failed to identify *Knight Owl v Michigan Liquor Control Commission*, Dickinson County Case No. 03-13070-AA and

*Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE, as pending, while MCR 8.107 required that they be listed.

183. On her “Delay in Matters Submitted to Judge” report filed for the third quarter of 2006, Respondent failed to identify *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE, as pending, while MCR 8.107 required that it be listed.

184. On her “Delay in Matters Submitted to Judge” report filed for the fourth quarter of 2006, Respondent failed to identify *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE, *Theisen v City of Iron Mountain*, Dickinson County Case No. 05-014075-CK, *Normand v Normand*, Dickinson County Case No. 06-14228-DO, and *Backus v Holmes (Backus)*, Dickinson County Case No. 05-013602-DM, as pending, while MCR 8.107 required that they be listed.

185. On her “Delay in Matters Submitted to Judge” report filed for the first quarter of 2007, Respondent failed to identify *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE, *Normand v Normand*, Dickinson County Case No. 06-14228-DO, and *Backus v Holmes (Backus)*, Dickinson County Case No. 05-013602-DM, as pending, while MCR 8.107 required that they be listed.

186. On her “Delay in Matters Submitted to Judge” report filed for the second quarter of 2007, Respondent failed to identify *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE and *Normand v Normand*, Dickinson County Case No. 06-14228-DO, as pending, while MCR 8.107 required that they be listed.

187. On her “Delay in Matters Submitted to Judge” report filed for the third quarter of 2007, Respondent failed to identify *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE and *Normand v Normand*, Dickinson County Case No. 06-14228-DO, as pending, while MCR 8.107 required that they be listed.

188. On her “Delay in Matters Submitted to Judge” report filed for the fourth quarter of 2007, Respondent failed to identify *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE as pending, while MCR 8.107 required that it be listed.

### C. Implementation Plan of January 2007

189. In January 2007, Respondent agreed to undertake various actions, both in her role as the Chief Judge and as a 41<sup>st</sup> Circuit Court Judge, to “assist in the timely processing and adjudication of cases and to ensure that date entered into the Judicial Information System (JIS) is timely and accurate.”

190. The document, which was prepared at the request of SCAO, is commonly referred to as the “Implementation Plan.”

191. Respondent have failed to comply with Paragraph 5 of the Implementation Plan, in that Respondent did not report “[a]ll matters, pre- and post-adjudication, not decided within 56 days after submission” to Respondent to SCAO on her Delay in Matters Submitted to Judge report.

192. The Implementation Plan also required Respondent to require her court staff to utilize the JIS system to track court dates.

193. Respondent have not required her personal secretaries to utilize the JIS system for scheduling, calendaring, and tracking cases.

194. As her secretaries do not utilize available computer systems, matters that have been adjourned, cancelled, added, and otherwise changed after initial entry on the JIS system are not efficiently tracked so that the staffs of each of county can prepare for hearings, trials, and other proceedings.

195. Respondent has failed to comply with the general intent of the implementation plan, in that her failure to timely process and adjudicate cases continues, as reflected by the delays in nine cases which extended well into 2007 and continue to the date of this letter.

Respondent's conduct, as described above, if true, constitutes:

- a) Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30 and MCR 9.205;
- b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205;
- c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Code of Judicial Conduct, Canon 1;
- d) Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of the Code of Judicial Conduct, Canon 2A;
- e) Conduct involving impropriety and the appearance of impropriety, in violation of the Code of Judicial Conduct, Canon 2A;
- f) Failure to respect and observe the law and to conduct herself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B;
- g) Failure to diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials, contrary to Code of Judicial Conduct, Canon 3B(1); and
- h) Conduct which exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(A)(2).



JUDICIAL TENURE COMMISSION  
OF THE STATE OF MICHIGAN  
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Detroit, MI 48202

/s/  
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Casimir J. Swastek (P 42767)  
Associate Examiner

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